

TIM CUNNINGHAM, OSB #100906

timcunningham@dwt.com

GREGORY A. CHAIMOV, OSB #822180

gregorychaimov@dwt.com

CHRIS SWIFT, OSB #154291

chrisswift@dwt.com

DAVIS WRIGHT TREMAINE LLP

1300 S.W. Fifth Avenue, Suite 2400

Portland, Oregon 97201-5610

Telephone: (503) 241-2300

Facsimile: (503) 778-5299

Attorneys for Plaintiffs Oregon Bankers Association,
Lewis & Clark Bank, Bank of Eastern Oregon
and People's Bank of Commerce

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

**OREGON BANKERS ASSOCIATION,
LEWIS & CLARK BANK, BANK OF
EASTERN OREGON AND PEOPLE'S
BANK OF COMMERCE,**

PLAINTIFFS,

v.

**STATE OF OREGON, ELLEN
ROSENBLUM, in her official capacity as the
Attorney General of the State of Oregon, and
ANDREW STOLFI, in his official capacity as
the Director of the Oregon Department of
Consumer and Business Services,**

DEFENDANTS.

Case No. 6:20-cv-01375-AA

**UNOPPOSED MOTION SETTING
TIME FOR DEFENDANTS TO
APPEAR**

LR 7-1 CERTIFICATION

Pursuant to L.R. 7.1(a)(3), counsel for Plaintiffs certifies that the parties have conferred,
and counsel for Defendants does not oppose the relief requested by this Motion.

MOTION

Pursuant to Fed. R. Civ. P. 6(b), Fed. R. Civ. P. 1, and the Court’s inherent authority to manage its docket, Plaintiffs move the court for an order setting the date for Defendants to enter their first appearance as September 29, 2020. This Motion is supported by the concurrently-filed declaration of Tim Cunningham (“Cunningham Dec.”).

FACTUAL BACKGROUND

Plaintiffs filed their complaint on August 13, 2020. Dkt. 1. That same day, counsel for Plaintiffs provided courtesy copies of the complaint via email to Steve Lippold, Chief Trial Counsel at the Oregon Department of Justice. Cunningham Dec. ¶ 2. Mr. Lippold responded and requested counsel for plaintiffs contact him regarding service. *Id.*

On August 14, 2020, counsel for Plaintiffs conferred telephonically with Mr. Lippold. *Id.* ¶ 3. Mr. Lippold requested that due to the COVID-19 pandemic, Plaintiffs not attempt service on Defendants, but instead provide waivers. *Id.* Counsel for Plaintiffs responded that Plaintiffs were ready, willing, and able to effectuate service, and would prefer to effectuate service so as to ensure a 21-day appearance as opposed to a 60-day appearance. *Id.*; compare Fed. R. Civ. P. 12(b)(a)(1)(A)(i), with Fed. R. Civ. P. 12(b)(a)(1)(A)(ii). Mr. Lippold and counsel for Plaintiffs agreed that Plaintiffs would send waiver forms, but Defendants would appear within the time contemplated for perfected service. Cunningham Dec. ¶ 4. Counsel for Plaintiff provided waiver forms describing the parties’ agreement. *Id.*

On August 26, 2020, counsel for Plaintiffs conferred with Keith Ketterling, whom defendants have retained. *Id.* ¶ 5. Mr. Ketterling requested additional time to appear, until September 29, 2020. *Id.* Plaintiffs do not oppose that request. *Id.* However, counsel for Defendants (who have not yet returned the waiver forms) have raised that the agreed-upon September 29, 2020 date—while longer than the 21-days allowed a defendant served with process—is shorter than the 60-days provided to a defendant who returns a waiver. *Id.* The

parties have conferred and agree this motion is the appropriate mechanism to set a response date.
Id. The parties do not make this request for purposes of delay.

POINTS AND AUTHORITIES

Whether viewed as an extension of time to appear 21-days after Plaintiffs would have effectuated service, or an agreed-upon time by the parties for an appearance, the Court has authority to set the parties' agreed date, September 29, 2020, as the date for Defendants' first appearance. *See* Fed. R. Civ. P. 6(b), Fed. R. Civ. P. 1; *see also, e.g. Yong v. I.N.S.*, 208 F.3d 1116, 1119 (9th Cir. 2000) (court has "inherent authority to control its own docket and calendar").

CONCLUSION

For the reasons outlined above, Plaintiffs request that the court grant Defendants until September 29, 2020 to enter their first appearance.

DATED this 10th day of September, 2020.

DAVIS WRIGHT TREMAINE LLP

By s/ Tim Cunningham

Tim Cunningham, OSB #100906

timcunningham@dwt.com

Chris Swift, OSB #154291

chrisswift@dwt.com

Telephone: (503) 241-2300

Facsimile: (503) 778-5299

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **UNOPPOSED MOTION**
SETTING TIME FOR DEFENDANTS TO APPEAR on:

Keith Ketterling
Steve Berman
Stoll Berne
209 SW Oak St., Ste. 500
Portland, OR 97204
Telephone (503) 227-1600
Facsimile (503) 227-6840
Email kketterling@stollberne.com; sberman@stollberne.com

Of Attorneys for Defendants

☒ by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to said attorney's last-known address and deposited in the U.S. mail at Portland, Oregon on the date set forth below;

☒ by emailing a copy thereof to said attorney at his/her last-known email address as set forth above.

Dated this 10th day of September 2020.

DAVIS WRIGHT TREMAINE LLP

By: s/ Tim Cunningham
Tim Cunningham, OSB #100906
Chris Swift, OSB #154291

Of Attorneys for Plaintiffs